



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1992

Ms. A. Lynn Nunns
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR92-202

Dear Ms. Nunns:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the act), V.T.C.S. article 6251-17a. Your request was assigned ID# 15010.

You have received a request for information relating to a particular site within the City of Corpus Christi "which possibly is contaminated by heavy metals and PCB's [sic]." Specifically, the requestor seeks "a copy of each document relating to [the waste site]--and specifically to the possible contamination of [the site] by heavy metals and PCBs--located within the offices of the City Manager, City Attorney, and City Engineer of the City of Corpus Christi (collectively, 'the City'). In addition, [the requestor] would like . . . a copy of each document relating to any communications concerning the possible contamination of this site made between the City or other agencies and the residents of the neighborhoods to the North and West of [the site], including Eastgate Street, Westgate Street, Southland Street, and the Hatch Trailer Park." You state that you already have released some of the requested documents to the requestor. However, you believe that subsections 3(a)(1), (3), and (11) of the act except the remainder of the requested information from required disclosure.

Section 3(a)(3) excepts from disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the . . . political subdivision is, or may be, a party, . . . that the . . . respective attorneys of the

various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) excepts information from disclosure if two conditions are met: first, litigation is pending or reasonably anticipated; and second, the information relates to the litigation. Open Records Decision No. 551 (1990) at 4. You have informed us that the City of Corpus Christi has received a notice of claim regarding the site at issue from an attorney representing several individuals and a motor home park located near the site. Additionally, the requestor, in his letter to you, states that "in the course of preparing for litigation" he has learned that City employees may have information relating to the site. In our opinion, you have demonstrated adequately that litigation is reasonably anticipated. We have examined the records you submitted for our review and have determined that they are reasonably related to the anticipated litigation. See Open Records Decision No. 551 (1990) at 5. Accordingly, section 3(a)(3) of the act permits you to withhold all of the requested information, with one exception, discussed *infra*. Please note that section 3(a)(3) permits you to withhold this information only for the duration of the litigation.

One set of documents you have submitted for our review is entitled "Commission Meeting Minutes" and is dated May 27, 1980 and December 9, 1980. We understand that this set of documents contains the minutes of the Planning Commission, a governmental body that is subject to the Open Meetings Act. See V.T.C.S. art. 6252-17, § 1(c) (defining "governmental body"). Section 3B of the Open Meetings Act requires a governmental body to prepare minutes of each of its open meetings; section 3B further states that these minutes are "public records and shall be made available for public inspection and copying." Information that the Open Meetings Act expressly makes public cannot be withheld under the act. See Open Records Decision Nos. 225, 221 (1979). Thus, to the extent they are responsive to the request, you must release the Commission Meeting Minutes to the requestor.

As we resolve this issue under section 3(a)(3), we need not discuss the applicability of subsections 3(a)(1) and (7) at this time. Because prior published open record decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you

have questions about this ruling, please refer to OR92-202.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kym Oltrogge", written in a cursive style.

Kym Oltrogge
Assistant Attorney General
Opinion Committee

KKO/lmm

cc: Mr. Barry Read
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